FH
[redacted]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[redacted]

DECISION
Case #: MGE - 176915

PRELIMINARY RECITALS

Pursuant to a petition filed on September 22, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services regarding Medical Assistance (MA), a hearing was held on November 29, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly determined the Petitioner's patient liability for institutional MA.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[redacted]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703
By: [redacted]
Milwaukee Enrollment Services
1220 W Vliet St
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.
2. On July 29, 2016, the Petitioner submitted an application for MA. She reported her residence at a rehab unit in a skilled nursing facility effective June 16, 2016. She reported her only income is

social security income of $2,207.90/month. She reported a mortgage expense of $610/month, utility expenses of $425/month, cable TV/internet expense of $150/month, loan payments of $715/month and health insurance premiums of $129.90/month.

3. On August 16, 2016, the agency issued a Notice of Decision to the Petitioner informing her that she was eligible for Institutional MA effective July 1, 2016 with a monthly patient liability of $1,145.23. She was also informed that she could be eligible for MA for the period of April 1, 2016 – September 30, 2016 if she met a deductible of $8,947.98.

4. On September 22, 2016, the Petitioner filed an appeal with the Division of Hearings and Appeals.

DISCUSSION

After an institutionalized person is determined eligible for MA, a county agency must calculate the amount of income the institutionalized person must contribute to defray the cost of care incurred by MA on his or her behalf on a monthly basis. This is referred to as the person's "patient liability." The calculation begins with gross income, and only a few items may be subtracted as deductions. These include the statutory $45 personal deduction, a health insurance expense deduction and, in some cases, a home maintenance deduction. Wis. Admin. Code §DHS 103.07(1)(d), and the federal rule at 42 C.F.R. §435.725 - .832. The formula for calculating the patient liability amount is set out at Medicaid Eligibility Handbook (MEH), §27.7.1, found online at http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm.

The controlling federal MA rule directs that agency to begin with gross income. It then contains this instruction, which allows for several specific deductions for a nursing home patient:

> §435.832 Post-eligibility treatment of income of institutionalized individuals: Application of patient income to the cost of care.
>
> (a) Basic rules. (1) The agency must reduce its payment to an institution, for services provided to an individual specified in paragraph (b) of this section, by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income.
>
> (2) The individual's income must be determined in accordance with paragraph (e) of this section.
>
> (3) Medical expenses must be determined in accordance with paragraph (f) of this section.
>
> (b) Applicability. This section applies to medically needy individuals in medical institutions and intermediate care facilities.
>
> (c) Required deductions. The agency must deduct the following amounts, in the following order, from the individual's total income, as determined under paragraph (e) of this section. Income that was disregarded in determining eligibility must be considered in this process.
>
> (1) Personal needs allowance. A personal needs allowance that is reasonable in amount for clothing and other personal needs of the individual while in the

institution. This protected personal needs allowance must be at least—

(i) $30 a month for an aged, blind, or disabled individual, ...

(ii) $60 a month for an institutionalized couple...

(2) Maintenance needs of spouse. For an individual with only a spouse at home, an additional amount for the maintenance needs of the spouse. This amount must be based on a reasonable assessment of need but must not exceed ...

(iii) The amount of the medically needy income standard for one person established under §435.811.

(3) Maintenance needs of family. For an individual with a family at home, ...

(4) Expenses not subject to third party payment. Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including—

(i) Medicare and other health insurance premiums, deductibles, or coinsurance charges; and

(ii) Necessary medical or remedial care ...

(d) Optional deduction: Allowance for home maintenance. For single individuals and couples, an amount (in addition to the personal needs allowance) for maintenance of the individual's or couple's home if—

(1) The amount is deducted for not more than a 6-month period; ...

(e) Determination of income—(1) Option. In determining the amount of an individual's income to be used to reduce the agency's payment to the institution, the agency may use total income received or it may project total monthly income for a prospective period not to exceed 6 months.

(2) Basis for projection. The agency must base the projection on income received in the preceding period, not to exceed 6 months, and on income expected to be received. ...

(f) Determination of medical expenses—(1) Option. In determining the amount of medical expenses to be deducted from an individual's income, the agency may deduct incurred medical expenses, or it may project medical expenses for a prospective period not to exceed 6 months. ...

[45 FR 24886, Apr. 11, 1980, as amended at 46 FR 47988, Sept. 30, 1981; 48 FR 5735, Feb. 8, 1983; 53 FR 3596, Feb. 8, 1988; 53 FR 5344, Feb. 23, 1988; 56 FR 8850, 8854, Mar. 1, 1991; 58 FR 4933, Jan. 19, 1993]

The agency testified that it arrived at the patient liability by subtracting the petitioner's Medicare premium of $104.90, a personal needs allowance of $45 and a maximum home allowance of $913 from her gross income of $2207.90.

The Petitioner testified that her mortgage expense had increased in the previous month to $778. She also requested to submit some additional expenses for consideration. The agency worker agreed to review the additional expenses submitted by the Petitioner to determine if any of them could be allowed to decrease the Petitioner's patient liability. Any determination made by the agency subsequent to the hearing regarding the additional expenses reported by the Petitioner are subject to new appeal rights for the Petitioner.

Based on the evidence presented at the hearing, I find no error in the agency's application of the law regarding a determination of the Petitioner's patient liability. This does not address any determination made by the agency subsequent to the hearing in this matter.

CONCLUSIONS OF LAW

The agency correctly determined the Petitioner's patient liability.

THEREFORE, it is **ORDERED**

That the Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision.** Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of January, 2017

\s_____
Debra Bursinger
Administrative Law Judge
Division of Hearings and Appeals

State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 24, 2017.

Milwaukee Enrollment Services
Division of Health Care Access and Accountability